IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 1812 of 2007

NATHU RAM & ORS
V/S
B.O.R.,AJMER & ORS.

Mr. GJ GUPTA, for the appellant / petitioner

Date of Order : 9.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

The learned Board of Revenue by the impugned order has set aside the order of the Appellate Court. The Appellate Court had remanded the matter to the learned trial Court. While setting aside the order of the Appellate Court, learned Board of Revenue has proceeded on consideration of the provisions of Order 41 Rule 24 CPC, and has directed to restore the appeal, and to decide the matter afresh after hearing the parties in accordance with law. The provisions of Order 41 Rule 24 read as under:-

> **"ORDER XLI**
>
> **24. Where evidence on record sufficient, Appellate Court may determine case finally.**- Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds."

A look at the above provisions shows that it gives ample power to the Appellate Court even to re-settle the issues if necessary, and is to finally determine the suit notwithstanding the fact that the trial Court judgment proceeds on some other grounds. It is not in dispute that the material on record is sufficient to enable the controversy to be decided.

In view of the above, I do not find any error in the impugned order. The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

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